



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

CASE NO: CC 14/2010

In the matter between:

THE STATE

And

VENECIA ANN KONING

ACCUSED

Neutral citation: *S v Koning* (CC 14/2010) [2017] NAHCMD 274 (29 September 2017)

Coram: SIBOLEKA J

Heard on: 20 September 2017

Delivered on: 29 September 2017

Flynote: Criminal law: Fraud – accused defrauded the employer – offence serious – custodial sentence – inevitable.

Summary: The accused worked as an administrative clerk at C.I.C. trading as Indo Atlantic, Walvis Bay. She had defrauded the employer in an amount of ±

N\$1, 808 399.33 in false cigarette invoices.

Held: The offence was premeditated and is serious.

VERDICT

In the result the accused is sentenced as follows:

All eighteen counts of fraud are taken together for purposes of sentence:

Twelve (12) years' imprisonment of which seven (7) years' is suspended for a period of five (5) years' on condition that the accused is not convicted of fraud committed during the period of suspension.

SENTENCE

SIBOLEKA J:

[1] On 7 September 2017, I have convicted the accused on counts 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 32, 34, 35 and 36 of fraud. It is now incumbent on me to consider the appropriate punishment. In doing that the court is required to take the following into account: the accused's personal circumstance; the crime itself and the interests of society.

[2] Associated with the above factors are the objectives of punishment such as deterrence, prevention, reformation, and retribution. One of these should not be over emphasized at the expense of the other. However, this eventuality cannot be totally avoided because each case depends on its own merits.

[3] The accused's personal circumstances are as follows: She mitigated under oath saying that she was thirty eight years old at the time she was arrested

on this matter and she is now forty six. She is married and has three children, from the eldest to the youngest they are aged twenty six, nineteen and twelve years respectively. She is a resident of a house given to her by her father, in Walvis Bay.

[4] The last born child is still attending school, this child and the second are currently residing with her sister in Walvis Bay. Since she resigned from her employment in July 2007, she has had no income. She said she is very sorry for what has happened, but could not take the court in confidence to say what she did with the money or cigarettes related to the charges she has been convicted on. The accused said she is not able to pay back the losses her former employer has suffered. She said she will apologize to Indo Atlantic for the wrongdoing she has done to their company. She asked for a lighter sentence.

[5] On the crime the accused worked as one of the administrative clerks at Atlantic C.I.C. Walvis Bay. Her duties entailed generating invoices on the computer from the Ex Car Book used by accused one. It surfaced from the evidence of Chamberlain that the reprint history code 101 belonged to the accused which she confirmed as correct. She accepted responsibility over the wrong doing preferred against her on the above counts in which the total loss amounted to N\$1 880 399.33 (One million eight hundred and eighty thousand three hundred and ninety nine Namibian Dollars and thirty three cents.) The losses on this matter involved the monetary value of the quantities of cigarettes of different brands which were fraudulently indicated as having been ordered and received while that was not the case.

[6] On the interests of society it is clear that the wellbeing of businesses is highly desired by the communities in order to deliver the required services to the people. The society also expects employees of businesses to execute their duties diligently in order to maintain their own job security as well as the anticipation of possible new recruitments to the business's work force.

[7] On behalf of his client, counsel for the accused submitted that the accused is a first offender, has a family, is married, and at the time of her arrest she was still taking care of her last born child. He asked the court to show mercy and prayed for a custodial sentence of ten years six years of which is suspended for five years on the usual condition of good behavior.

[8] The accused's counsel also conceded that his client was placed in a position of trust as one of the administrative clerks. She however broke the trust by defrauding her own employer. According to this counsel that is what makes the offence to be serious.

[9] The prosecution counsel submitted that the offence related to eighteen counts of fraud in which the accused has been convicted were committed while she was employed as one of the administrative clerks at C.I.C. Walvis Bay. She inflicted losses to her employer in the amount of N\$1 880 080.33 (One million, eight hundred and eighty Namibian Dollars and thirty three cents.) According to the prosecution counsel the accused has shown no signs of remorse because she still maintained her innocence even during mitigation. The accused has shown her reluctance to take the court in confidence and state what she did to the cigarette brands she defrauded her employer on. This counsel submitted and persuaded the court to consider a custodial sentence of which a small portion should be suspended on the usual condition of good behavior.

[10] He referred the court to various authorities, among these is *S v Sadler*¹ where it was held that a wrong impression was being created that prison is only for those who commit violent crimes and not for people with respectable backgrounds (white collar crimes) even if their dishonesty has caused substantial loss.

¹ *S v Sadler* 2000 (1) SACR 331 (SCA) at 335g – 336a.

[11] On this matter the court has taken the following factors into account; the accused is a first offender; has a family and is married; has the last born child aged twelve years to look after, she has been convicted on eighteen counts of fraud causing her former employer a substantial loss amounting to N\$1 808 399.33 (One million eight hundred and eight thousand three hundred and ninety nine Namibian Dollars and thirty three cents.)

[12] In the result the accused is sentenced as follows:

[13] All eighteen counts of fraud are taken together for purpose of sentence: Twelve (12) years' imprisonment of which seven (7) years' is suspended for a period of five years' on condition that the accused is not convicted of fraud, committed during the period of suspension.

A M SIBOLEKA

Judge

APPEARANCES:

STATE: Mr. E. Nduna
Office of the Prosecutor-General, Windhoek

ACCUSED: Mr. T. Ipumbu
Directorate of Legal Aid, Windhoek